IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1120 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYMALBHAI NARENDRABHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1120 of 1995

MR DEEPAK V PATEL for Petitioner No. 1

..... for Petitioner No. 2

Ms N V Joshi, APP for Respondent No. 1

MR DN PATEL for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/03/2003

ORAL JUDGEMENT

This is an appeal under section 374 of the Code of Criminal Procedure, 1973 (for short, 'the Code')

challenging the judgment and order recorded by the learned Special Judge (City Sessions Court) at Ahmedabad on 29.9.1995 in Special Criminal Case No. 23/95 whereby the learned trial Judge acquitted the first appellant and convicted the second appellant for offence punishable under section 3 read with sections 7 and 10 of the Essential Commodities Act, 1955 and directed the second appellant to pay fine of Rupees Ten thousand while acquitting the first appellant. Feeling aggrieved by the said judgment and conviction order of the trial court, the appellant has preferred this appeal before this Court. The appeal was admitted. Ms N V Joshi, learned APP appears for the respondent-State and Mr D N Patel, learned Central Government Standing Counsel appears for respondent no.2.

2. During the course of hearing, learned Advocate appearing for the appellants has made a statement that the appellant does not press the appeal with respect to the judgment and order of the trial court relating to the conviction of the appellant for the aforesaid offence. It is, therefore, stated at the bar that the conviction may be maintained. As regards quantum of sentence, it is noticed that the second appellant has been convicted and directed to pay fine of Rupees Fifteen thousand. Learned Advocate for the appellants states that the company in question was a sick company and that the only allegation against the company is that the second appellant had not submitted the periodical returns in time. It is also stated that the returns and statements were submitted little late but the fact remains that the returns submitted was not in time. Therefore, the learned Advocate for the appellants submits that the offence can be treated to be a technical one. He has also stated that in a similarly situated case, the said court had sentenced and convicted the accused persons in Special Criminal Case No.47/1990 on 3.2.1993 and the concerned accused were directed to pay a fine of Rupees One thousand five hundred. It is, therefore, contended that the facts of the two cases are in fact identical and, therefore, it was necessary for the trial court to take a pragmatic view of the matter considering the fact that the second appellant is a sick mill which had no production but only returns were required to be sent in time which were no sent in time. After hearing the learned Advocates for the parties and considering the submissions made at the bar, it is found that the order directing payment of fine as aforesaid, is on higher side and, therefore, there is no reason not to place the present appellant on par with the accused persons in the aforesaid Special Case No.47/90.

3. For the foregoing reasons, the present appeal is partly allowed. The judgment and conviction order recorded by the trial court dated 29.9.1995 in Special Criminal Case No. 23/95 are ordered to be maintained. However, with respect to the quantum of amount of fine, it is directed that present appellant no.2 is ordered to pay fine of Rupees Two thousand five hundred for the aforesaid offence instead of Rupees Fifteen thousand as ordered by the trial court. If the fine is already paid, the balance shall be refunded to appellant No.2. Rule is made absolute to that extent.

10.3.2003 [D P Buch, J.]
msp